IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11358 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

LAXMAN RAM

Versus

D S SHUKLA OR HIS SUCCESSOR INOFFICE

Appearance:

1. Special Civil Application No. 11358 of 2001

MR AK CLERK for Petitioner No. 1

MR ANANT S DAVE for Respondent No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/04/2002

C.A.V. JUDGEMENT

1. The petitioner is working as Sub Inspector with the C.I.S.F. The petitioner challenges the order dated 03.6.2000 passed by the Assistant Commandant imposing a

penalty of withholding of one increment for one year without future effect and the order dated 12.01.2001 passed by the Commandant, C.I.S.F. enhancing the penalty of withholding of one increment for two years without future effect.

2. The facts of the case are that there was a heated exchange of words between the petitioner who is a Sub Inspector and one Shri Caanjir who is the Inspector in the residential colony in connection with drinking water. The said conduct of the petitioner has been treated as misconduct and the penalty of withholding of one increment without future effect was imposed by the Assistant Commandant by the order dated 03.6.2000.

3. The Commandant, C.I.S.F., thereafter, took the case in suo moto review and issued a show cause notice dated 13.10.2000 to the petitioner under Rule 49 (1) & (2) of the C.I.S.F. Rules, 1962. By the said show cause notice, the petitioner was asked to show cause why the penalty should not be enhanced. Thereafter, the Commandant passed the order dated 12.01.2001 enhancing the penalty to withholding of one increment for two years without future effect.

4. The learned Counsel for the petitioner contended that the incident which occurred in the residential colony in connection with drinking water was a personal and private dispute between two residents of the colony and it was not in the course of or during the employment and it had no connection with the employment and, therefore, such an incident or conduct cannot be treated as a misconduct at all and, therefore, the entire proceedings of enquiry and the order or punishment are vitiated and both the orders of penalty as well as enhancement of penalty deserves to be quashed and set aside.

5. On the other hand, the learned counsel for the respondent, by filing an affidavit-in-reply, submitted that even in the residential colony the members of the C.I.S.F., a paramilitary force, are required to maintain discipline and, therefore, the incident cannot be treated as a personal or private dispute and, therefore, the action of the respondent in imposing the penalty and in enhancing the penalty are legal and valid.

6. It is evident and it is not disputed that the incident and conduct for which a penalty of withholding one increment for one year was imposed had not happened during the course of employment or in connection with the

performance of duties by the petitioner. It was a personal dispute between two residents of a residential colony over drinking water which is an essential daily necessity. If two persons had a minor quarrel or heated exchange or words when the drinking water was being supplied only for 15 minutes in a day, the same could not be treated as a misconduct serious enough to warrant enhancement of the penalty.

7. Therefore, having regard to the facts and circumstances of the case, the order dated 12.01.2001 passed by the Commandant, C.I.S.F. enhancing the penalty to withholding of one increment for two years without future effect being disproportionate to the alleged misconduct and having been passed in the context of petitioner's appeal and without any additional material or grounds to justify the same, the original order of the Assistant Commandant dated 03.6.2000 is upheld and restored while the impugned order dated 12.01.2001 is hereby set aside. The petition is partly allowed and Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)